IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24757 of 2002

Between:

K.Ramachandra S/o Ramappa,

Agedabout 59 years,

Retired Dy. General Manager, Hindupur,

Ananthapur district.

..... PETITIONER

AND

1. The Ananthapur District Co-operative Central

bank Ltd., rep. By its General Manager, Ananthapur,

Ananthapur district.

2. The A.P. co-operative Bank rep. By its

Managing Director, Troop Bazar, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of a writ of mandamus declaring the action of the first respondent in non-payment of retirement benefits such as gratuity, encashment of leave salary, security deposit etc. and the non-payment of officiating allowance, conveyance allowance etc. for the period the petitioner worked as Incharge Dy. General Manager from 17-04-2001 to 31-07-2002 vide Memo.ESTT/F.No.4/02-03, Dated 23-11-2002 of the first respondent as illegal,

irregular, arbitrary, unconstitutional, unreasonable unfair, unwarranted, unjustified and unsustainable and set aside the same directing the first respondent to forthwith pay the retirement benefits and the officiating allowance, conveyance allowance etc to the petitioner for the period he worked as Incharge Dy. General Manager.

Counsel for the Petitioner: MR.P.VEERA REDDY

Counsel for the Respondents: MR.O.MANOHER REDDY

The Court made the following:

ORDER:

Declaring the action of the first respondent in not paying the retirement benefits such as gratuity, encashment of leave salary, security deposit and officiating and conveyance allowances to the petitioner for the period worked as in-charge Deputy General Manager from 17-04-2001 to 31-07-2002 vide proceedings in Memo.ESTT/F.No.4/02-03, dated 23-11-2002, as illegal and arbitrary, and further to direct the first respondent to pay the retirement benefits and the officiating and conveyance allowance to the petitioner, the present writ petition is filed.

The brief facts that are necessary for disposal of the present writ petition are as follows:

The petitioner states that initially, he was appointed as a Manager in the first respondent-bank in the year 1968 and thereafter he was promoted as Assistant General Manager in the year 1993. Thereafter, in pursuance of the circular instructions in CDR/F80/17/1993, dated 20-02-2001, the first respondent through proceedings dated 17-04-2001 in Rc.No.EST.2001-02 promoted and kept the petitioner as
in-charge Deputy General Manager and continued till his retirement on 31-07-2002.

The petitioner further stated that though the second respondent, through its Member Secretary and Cadre Authority, has issued Circular instructions vide Ref No.CDR/F.147/I/1328, dated 06-11-2001 to all the General Managers of District Co-operative Central Banks in the State to pay the officiating, conveyance and newspaper allowances to the Deputy General Managers officiating, the first respondent has not paid any allowance during the tenure of his working as Deputy General Manager. In spite of several representations made to the first respondent

quoting the Circular of the second respondent dated 06-11-2001, the first respondent has not considered the same and passed any orders. But, the second respondent, through the Secretary, advised the first respondent by his letter, dated 25-11-2002, to consider the request of the petitioner for payment of officiating allowance. Ultimately, the first respondent through the memo dated 23-11-2002, informed the petitioner that the payment of gratuity, encashment of leave salary and gratuity will be made only after the disciplinary action contemplated against the petitioner with regard to the issuance of a false certificate in the year 1997-98 is finalized and the officiating allowance will not be paid on the ground of weak financial position of the bank. Aggrieved by the same, the present writ petition is filed.

A detailed counter affidavit is filed by the respondents stating that through proceedings dated 17-04-2001 issued in Rc.No.Estt/2001-2002, the petitioner was asked only to officiate as in-charge Deputy General Manager, but was not promoted.

It is also stated that since the proceedings issued in Circular dated 06-11-2001 are only advisory in nature, it is not mandatory on the part of the first respondent-bank to pay the allowances. It is further stated that keeping in view the circular dated 06-11-2001 and the weak financial position of the bank, the Managing Committee of the Bank passed Resolution No.8, dated 10-12-2001 rejection the claim of the petitioner for officiating and conveyance allowances. Therefore, the petitioner is not entitled to officiating and conveyance allowances.

The learned counsel appearing for the petitioner contended that as per the instructions issued by the second respondent, the petitioner is entitled for the officiating and conveyance allowances. He also contended that even the other retirement benefits such as gratuity, encashment of leave salary and security deposit are not being released. Hence he prays to allow the writ petition.

On the other hand, the learned Standing counsel appearing for the respondents vehemently contended that the Circular issued by the second respondent is only advisory in nature and an option is given to the Managing Committee to take a decision for payment of officiating and conveyance allowances and the Committee had already took a decision, considering the weak financial position of the bank, not to pay officiating and conveyance allowances and that does not confer any right to the petitioner to claim Officiating and conveyance allowances. Hence, he prays to dismiss the writ petition.

Insofar as the payment of gratuity, encashment of leave salary, security deposit is concerned, the learned counsel for the respondents contended that on the ground of contemplated enquiry, the petitioner is not entitled for the release of gratuity, encashment of leave salary, security deposit.

The appointment of the petitioner in the bank and also holding of the post as in-charge Deputy General Manager from 17-04-2001 to 31-07-2002 are not in dispute. The short point for consideration is whether the respondents are justified in withholding the amounts of retirement benefits such as gratuity, encashment of leave salary, security deposit. The answer of the respondents is that since an enquiry is contemplated against the petitioner, they can withhold those amounts.

The petitioner was retired from service on 31-07-2002. No disciplinary action has been taken so far. Since no departmental enquiry is pending even as on date, the question of withholding gratuity, encashment of leave salary and security deposit does not arise and therefore, the respondents are bound to pay that amounts and release the same.

With regard to the officiating and conveyance allowances for the period from 17-04-2001 to 31-07-2002 as the
in-charge Deputy General Manager, the claim of the petitioner is based on the Circular issued by the second respondent dated 06-11-2001, which is advised the concerned to take suitable decision with regard to the payment of officiating allowance to the officiated Deputy General Managers. This is a circular instruction given to the first respondent. The first respondent has already taken a decision by its proceedings dated 23-11-2002 as not to give any officiating allowance in view of the weak financial position of the bank. Therefore, no Rule or Regulation is brought to the notice of this Court to show that when a person is kept in-charge of a particular post, he is eligible for the officiating and conveyance allowances. Except the proceedings of the second respondent, dated 06-11-2001, no other proceedings are brought to the notice of this Court. The proceedings of the second respondent dated 06-11-2001does not confer any right to the petitioner to claim officiating and conveyance allowances as a matter of right. Appropriate decision has been taken by the Managing Committee not to pay officiating and conveyance allowances to the persons, who were officiated as in-charge Deputy General Managers, because of the weak financial position of the bank. So, the same cannot be said to be arbitrary

and illegal. Therefore, the petitioner is not entitled for the officiating and conveyance allowances.

Accordingly, the writ petition is partly allowed directing the first respondent to pay the retirement benefits of the petitioner such as gratuity, encashment of leave salary and security deposit within a period of three months from the date of receipt of a copy of this order. The writ petition is dismissed insofar as the claim of the petitioner with regard to the officiating and conveyance allowances for the period
from 17-04-2001 to 31-07-2002 is concerned. In the circumstances, no order as to costs.

_____

K.C.BHANU, J

Dated June 21, 2005.

YCR

Rule nisi is made absolute as above.

Witness the Hon'be Sri Bilal Nazki, the Acting Chief Justice on this

Tuesday, Twenty first day of June Two thousand and five.

To

1. The General Manager, Ananthapur District Co-operative Central

bank Ltd., Ananthapur, Ananthapur district.

2. The Managing Director, A.P. Co-operative Bank,

Troop Bazar, Hyderabad.

3. 2 C.D. copies.